

MAY 23 1980

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May 23, 1980

Hon. Mary Lou Burg
Chairman
Copyright Royalty Tribunal
1111 - 20th Street, N.W.
Room 450
Washington, D.C. 20036

Re: Cable Royalty Distribution Proceeding

Dear Madam Chairman:

This letter on behalf of the character claimants is in response to paragraphs 2 and 3 of the Tribunal's May 7, 1980 order directing certain submissions on or before May 23, 1980.

Paragraph 2 -- The character claimants do not advocate any particular position concerning the situation of the so-called "categories of claimants" not fully represented by their total number of eligible claimants. We note, however, that the statute directs that the compulsory licensing fees be distributed to "claimants" and does not expressly refer to "categories of claimants," although the statute does permit claimants to agree among themselves as to the proportionate division of fees among them, to lump their claims together and file them jointly or as a single claim, or to designate a common agent to receive payment on their behalf.

Once a claimant -- singly or jointly with others -- has established that its copyrighted work was included in a qualifying non-network television program secondarily transmitted by a cable system, such claimant is entitled to a share of the royalty fees.

We believe that each of the character claimants identified below has satisfied the statutory criteria and is entitled to its share of the royalty fund.

Hon. Mary Lou Burg

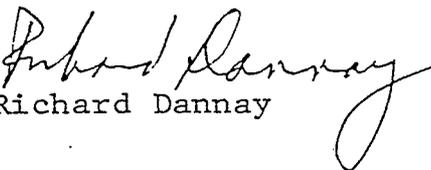
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May 23, 1980

Paragraph 3 -- As previously communicated to you by telephone, the character claimants have decided not to present any rebuttal testimony with respect to evidence submitted by other claimants to this point in the proceeding. We trust that, should we desire to, we will have the opportunity to present surrebuttal evidence at a later time.

Respectfully,

— SCHWAB GOLDBERG PRICE & DANNAY


Richard Dannay

RD:msg

Character Claimants:

Archie Comic Publications, Inc.
DC Comics, Inc.
Harvey Cartoons
Henson Associates, Inc.
King Features Syndicate, Inc.
Larry Harmon Pictures Corp.
Marvel Comics Group, a Division of
Cadence Industries Corporation
Muppets, Inc.
Radio Comics, Inc.

Before the Copyright Royalty Tribunal

Washington, D.C.

In the Matter of

Cable Royalty Distribution Proceeding

STATEMENT OF NATIONAL PUBLIC RADIO (NPR)
IN RESPONSE TO THE COPYRIGHT ROYALTY TRIBUNAL'S
FEDERAL REGISTER NOTICE, OCTOBER 17, 1979.

National Public Radio (NPR) is the private, nonprofit membership organization representing the licensees of more than 220 noncommercial, educational radio stations operating in 45 states, the District of Columbia and Puerto Rico. NPR offers the following statement in response to the Copyright Royalty Tribunal's (CRT) notice in the Federal Register of October 17, 1979 (page 59930).

Thus far in this proceeding the attention of the CRT has focused almost entirely on the claims of television broadcasters and television program suppliers to cable copyright royalties. NPR wishes to remind the CRT that the claims of radio broadcasters and program producers are also an important part of this proceeding.

In its October 17 notice, the CRT posed a number of questions for comment. The following responses are numbered in the same sequence as the CRT questions.

1. The CRT has asked for comment concerning the copyrightability of the broadcast day as a program compilation.

While other parties will be addressing this question in more detail, NPR believes that the broadcast day is most certainly copyrightable as a compilation under the new Copyright Act. In particular, Section 102 of the Act explicitly recognizes sound recordings as copyrightable, and Sections 101 and 103 define compilation.

As Section 101 states:

A "compilation is a work formed by the collection and assembling of pre-existing materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term "compilation" includes collective works.

2. The CRT has also asked for comment on the apparently conflicting copyright theories advanced in this proceeding by television broadcasters and television program suppliers. NPR believes the nature of the conflict can best be expressed in this question:

How can the theory that broadcast days are copyrightable compilations be reconciled with the fact that many of the individual programs in a broadcast day may in fact be owned by parties other than the broadcaster?

NPR believes that the answer to this question cannot be found by statutory reference. We are convinced that this is a question which relates to the nature and specific details of the contractual arrangements which exist between the claimants who are television program suppliers and those who are television broadcasters.

Obviously, NPR does not know what these specific contractual arrangements are. However, we do not believe that written comments such as these represent a practical method for the CRT to test the competing claims of ownership.

NPR wishes to point out that this particular dispute has no significant impact on the merits of the claims for cable royalties that have been made by NPR and its member stations. The fact that the sports and motion picture interests are claiming entitlement to some of the same fees sought by the television broadcasters does not diminish the merits of the royalty claims made by audio producers and distributors in the proceeding.

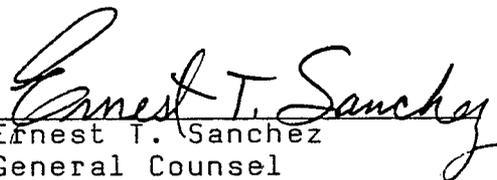
3. The CRT has asked for comment on objections raised as to the standing of certain or all sports claimants.

NPR also believes that the question of standing by sports claimants is governed by the agreements between the sports claimants and the television broadcasters. The CRT hearings in December, when there will be an opportunity to cross examine the claimants under oath, would appear to be the best forum to resolve this particular dispute.

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NPR looks forward to supplementing these comments, as appropriate, prior to the CRT deadline of November 28, 1979. NPR also looks forward to participating in the oral arguments before the CRT commencing on December 5, 1979.

Respectfully submitted,


Ernest T. Sanchez
General Counsel


Carol Moody
Music and Program Rights
Coordinator

November 15, 1979

National Public Radio
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